

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**R.A. JR. (a minor child, by and through his
Father and next friend, Richard Lemmel
Arnold,**

Plaintiff,

VS.)

Case No.: CV-3:06-cv-337-WHA

DEPUTY SHERIFF WALTER LACEY,

Defendant.)

DEFENDANT’S RESPONSE TO PLAINTIFF’S SECOND MOTION IN LIMINE

COMES NOW the Defendant, Deputy Walter Lacey, and in response to Plaintiff's Second Motion in Limine says as follows:

1. Rule 32(a)(2) of the *Federal Rules of Civil Procedure* allows the deposition of a party to be used by an adverse party for any purpose. The Rule permits a party to introduce, as part of his substantive proof, the deposition of his adversary, and it is immaterial that the adversary is available to testify. *Community Counselling Serv., Inc. v. Riley*, 317 F.2d 239, 243 (4th Cir. 1963).

See also *Coughlin v. Capitol Cement Co.*, 571 F.2d 290, 308 (5th Cir. 1978), in which the Fifth Circuit noted that a party may introduce the deposition of his adversary as part of its substantive proof regardless of the adversary's ability to testify at trial..

For the foregoing reasons, the Defendant respectfully requests this Honorable Court to deny the Plaintiff's Second Motion in Limine.

/s/ C. Winston Sheehan, Jr.

C. WINSTON SHEEHAN, JR.

Attorney for the Defendant, Walter Lacey

OF COUNSEL:

BALL, BALL, MATTHEWS & NOVAK, P.A.

2000 Interstate Park Drive, Suite 204

Post Office Box 2148

Montgomery, Alabama 36102-2148

Phone: (334) 387-7680

Fax: (334) 387-3222

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2007, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following registered persons and that those persons not registered with the CM/ECF system were served by U.S. mail:

Hon. Arlene M. Richardson
Richardson Legal Center, LLC
Post Office Box 971
Hayneville, AL 36040-0971

/s/ C. Winston Sheehan, Jr.

OF COUNSEL